Case Number: 1401686/2024

EMPLOYMENT TRIBUNALS

Claimant: Ogbonna Nnamuchi

Respondent: University of Exeter

Heard at: Southampton (by CVP) **On:** 26 June 2025

Before: Employment Judge Yallop

Representation:

Claimant: In person
Respondent: Mrs K Johnson (solicitor)

PRELIMINARY HEARING IN PUBLIC RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

Jurisdiction

1. The Claimant claims he was employed by the Respondent within the meaning of s83 Equality Act 2010. The Tribunal has jurisdiction to determine his complaints relating to such employment. However, all complaints made by the Claimant falling within Part 6 of the Equality Act 2010 are dismissed because the Tribunal does not have jurisdiction to determine them.

Time limit – race discrimination

2. The complaints of direct race discrimination and indirect race discrimination were not presented within the time limit under s123(1)(a) Equality Act 2010. It is not just and equitable to extend time. The claim is therefore dismissed.

Time limit – breach of contract

3. The complaint of breach of contract was not presented within the applicable time limit. It was reasonably practicable to do so. The complaint of breach of contract is therefore dismissed.

REASONS

Introduction

1. Ogbonna Nnamuchi was an international postgraduate student at the Respondent, having received and accepted an offer from the Respondent on 19 August 2021 to study a Doctor of Philosophy (PhD) research degree. Mr Nnamuchi claims that the offer made to him by the Respondent included a paid teaching position. On 9 May 2022, the Respondent withdrew the Claimant from his study. The reason for this withdrawal was stated to be that the Claimant was unable to obtain the necessary visa. The Claimant was never given paid work by the Respondent. The Claimant claims direct and indirect race discrimination and breach of contract.

2. The Respondent contests the claim. It says that the Claimant was only ever a student, and no offer of employment was made to him. It argues that the Claimant's claims are out of time and that time should not be extended. In the alternative, it proposes that the Claimant's claim should be struck out on the basis that it has no reasonable prospects of success.

The hearing

3. I conducted a Preliminary Hearing on 26 June 2025 to decide: whether the claim should be dismissed because the Claimant is not entitled to bring it if the statutory time limit has expired; whether to strike out the claim because it has no reasonable prospect of success; applications set out in the Respondent's ET3 relating to the Employment Tribunal's jurisdiction to consider complaints under Part 6 of the Equality Act 2010 (EqA); and costs.

4. I explained to the parties that the Employment Tribunal does not have jurisdiction to consider discrimination complaints relating to the provision of higher education, and that any such complaints would need to be brought in the County Court. I then sought to clarify the Claimant's claim.

5. The Claimant said that he describes himself as Nigerian, and he confirmed the following regarding his complaint of direct race discrimination:
    a. He asserts that the Respondent did not give him employment because it terminated his course, and that constituted less favourable treatment.
    b. He says his course was terminated because of his race.

6. In relation to his complaint of indirect race discrimination, the Claimant confirmed that the provision, criterion or practice of the Respondent that he complains put him (and others sharing his protected characteristic) at a particular disadvantage, was the Respondent's policy of not allowing a person to work unless that person can prove they have a visa that enables them to work.

7. I then agreed with the parties that the issues I needed to determine at the Preliminary Hearing in relation to those employment-related complaints were as follows:

A. Time limit – discrimination

(1) Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
   a. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?
   b. If not, was there conduct extending over a period?
   c. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
   d. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
      i) Why were the complaints not made to the Tribunal in time?
      ii) In any event, is it just and equitable in all the circumstances to extend time?

B. Time limit – breach of contract

(2) Was the complaint presented within the time limit set out in article 7 of The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994? The Tribunal will decide:
   a. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of the Claimant's employment?
   b. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
   c. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

C. Strike out - no reasonable prospects of success

(3) Does the claim have no reasonable prospect of success?

(4) If so, should it be struck out pursuant to rule 38(1)(a) of the Employment Tribunal Procedure Rules 2024?

D. Costs

(5) If the claim has no reasonable prospects of success, should a costs order be made under rule 74 of the Employment Tribunal Procedure Rules 2024?

(6) If so, what sum should be awarded?

8. Mr Nnamuchi gave sworn evidence in relation to the time limit issues. There were no other witnesses.

Preliminary matters

9. Before I heard any evidence, I agreed with the parties that I would waive the requirement set out in the Notice of Preliminary Hearing dated 14 February 2025 for the Claimant to provide a witness statement explaining why he was unable to present his claim in time. The Claimant explained that he had not felt able to produce a witness statement on this point because he contends that his claim was lodged in time and it therefore did not make sense for him to set out why his claim was late. The Respondent did not object to the Claimant's claim form and grounds of claim forming his evidence in chief, and

I considered that the prejudice to the Claimant in not allowing him to give evidence far outweighed any prejudice to the Respondent in not having sight of that evidence in advance. I therefore concluded that it was in accordance with the overriding objective to proceed on that basis.

Findings of Fact

10. The relevant facts are as follows.

11. The Claimant is a national of Nigeria and a lecturer at a Nigerian University. He took study leave and came to the UK to further his education.

12. The Respondent is a Russell Group University with campuses in Exeter and Cornwall. The Claimant attended the Respondent's summer school programme as part of his search for a PhD course. At the summer school, the Claimant met Dr Senthilarasu Sundaram, who worked within the Respondent's renewable energy department. The Claimant says that Dr Sundaram told him to apply to the Respondent for a place on the PhD programme, and promised that that place would include a paid teaching position. The Respondent denies that Dr Sundaram offered the Claimant a teaching role.

13. The Claimant applied to the Respondent and by a letter dated 19 August 2021 the Respondent offered the Claimant a place on its 'Doctor of Philosophy in Renewable Energy (Cornwall)' programme from 20 September 2021 to 19 September 2025. The offer letter does not mention a teaching position, or any other form of paid work.

14. At the time of the Claimant's offer, the Respondent was allowing students to register without first demonstrating that they had the necessary visa to be able to study. However, students were required to provide that information after they had enrolled.

15. The requirement to hold Academic Technology Approval Scheme (ATAS) clearance applied to the Claimant's course, so the Claimant applied for clearance and received an ATAS certificate on 6 October 2021. The Claimant completed the Respondent's registration process on 11 November 2021. The Respondent issued the Claimant with a Confirmation of Acceptance to Study (CAS) on 26 November 2021 (which was a document that is needed when applying for student visa).

16. On 13 December 2021, the Respondent wrote to the Claimant informing him that as he had not been able to demonstrate that he had immigration permission to study in the UK, the Respondent was invoking a period of Temporary Visa Interruption (TVI) in accordance with the Respondent's academic regulations. The Respondent's email explained that the Home Office requires the University to ensure that all students have valid immigration permissions, and the Claimant had been unable to demonstrate that he held a valid visa. It confirmed that during the TVI period the Claimant's access to the University and its services were suspended. It stated: 'If you present a valid visa to us which permits you to study, the temporary visa interruption will be lifted and your access will be reinstated.' Finally, it advised

the Claimant where he could get information on appealing the decision.

17. On 9 May 2022, the Respondent wrote to the Claimant notifying him that he had been withdrawn from his PhD programme of study with immediate effect. The reason for the withdrawal was stated as: 'Unable to obtain necessary visa to study in the UK'. The letter explained that the Claimant could apply for reinstatement at a later date.

18. The Claimant does not accept that the Respondent had the power to remove him from his course unilaterally. He also argues that the Respondent's policy states that any action taken within an assessment period (i.e. in April/May) is invalid. He asserts that he had had the right to study at, and work for, the Respondent at all relevant times and argues that the Respondent's policies are subordinate to Home Office rules, with which he had complied.

19. The Claimant accepted in his oral evidence that in accordance with its written policies, the Respondent would only employ registered students as postgraduate teaching associates. The Claimant also accepted that the Respondent's policy states that when a PhD student finishes their course, they can only continue to do planned contracted work for the Respondent until the end of the academic year. When asked whether he had ever done any paid work for the Respondent, the Claimant confirmed that he not.

20. Following the withdrawal letter on 9 May 2022, there was correspondence between the Claimant and Respondent regarding reinstatement and the Claimant made complaints about his treatment. The Respondent says, however, that the Claimant did not officially appeal its decisions either to interrupt his studies or remove him from his programme. When asked about that in oral evidence, the Claimant said there was no ground for him to appeal, as his CAS and ATAS were valid and the University knew that.

21. There were two incidents following the letter of 9 May 2022 that the Claimant suggests indicate he remained a student of the Respondent. The first of these incidents occurred on 6 February 2024, when the Claimant contacted the Respondent's Student Information Desk (SID). The SID advisor told the Claimant that if he paid £1,558 in tuition fees, he would be able to access University services. The Claimant paid the £1,558, but his access was not restored. The Respondent says that the money related to a fee debt that had been outstanding from the period when the Claimant had been enrolled as a student, and the SID's advice was unfortunately incorrect. The Head of Postgraduate Research Student Support and the SID advisor therefore wrote to the Claimant on 19 and 21 February 2024 to explain that the Claimant's access would not be restored because he had been withdrawn from his studies.

22. The second incident the Claimant pointed to was that on 29 April 2024 the revenues division of Dundee Council wrote to the Claimant about his liability for Council Tax. They confirmed that they had 'checked with the relevant institutions' relating to various periods of study. In relation to the Claimant's PhD course, the Council said that 'since 20th September 2021, you have been studying your PhD at the University of Exeter'.

23. When asked why he had lodged his claim at the time that he had, the Claimant explained that he had been told to contact the Office of the Independent Adjudicator, but he had not received a Completion of Procedures letter. He therefore felt it was a good time for the case to be heard by the Employment Tribunal, as he had been trying to deal with it himself, but he needed the tribunal to resolve it.

24. When asked why he had not lodged his claim when it became clear that the Respondent considered him to have been withdrawn from his course and was not letting him work, the Claimant explained that if he had accepted there had been an interruption of his study he would have had to have left the country. He also explained that he had not taken legal advice about the employment-related aspects of his case, as his main goal had been regaining access to his course, as he was sure that employment would follow.

Relevant law and conclusions

Jurisdiction

25. Section 114 of the EqA provides that the County Court has jurisdiction (with some exceptions that are not relevant to this case) to determine claims relating to a contravention of Part 6 (education). Section 120 of the EqA provides that the Employment Tribunal has jurisdiction (with some exceptions that are not relevant to this case) to determine complaints relating to a contravention of Part 5 (work). The Claimant's complaints of direct and indirect race discrimination in relation to his alleged employment with the Respondent fall within Part 5 of the EqA and the Employment Tribunal therefore has jurisdiction to hear them.

26. Pursuant to the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the Order"), the Employment Tribunal has jurisdiction to deal with a breach of contract claim by an employee against their employer if the breach of contract arises or is outstanding on the termination of the employee's employment.

27. The complaints the Claimant made in his original claim about discrimination and breach of contract in relation to the provision of higher education services fall outside the jurisdiction of the Employment Tribunal, so are dismissed.

Time limit – discrimination

28. The time limit for bringing discrimination claims is set out in section 123(1) EqA. This provides that claims must be brought within:
    a. the period of 3 months starting with the date of the act to which the complaint relates, or
    b. such other period as the employment tribunal thinks just and equitable.

29. Section 123(3) EqA states that conduct extending over a period is to be treated as done at the end of the period and failure to do something is to be treated as occurring when the person in question decided on it.

30. In **Mr R Miller and Others v The Ministry of Justice and Others and Mr N Thompson v Ministry of Justice & Department for Communities and**

Local Government UKEAT/0003/15/LA, UKEAT/0004/15/LA, Mrs Justice Elisabeth Laing provided the following summary of the principles governing the 'just and equitable' discretion:

- the discretion to extend time is a wide one.
- time limits are to be observed strictly in employment tribunals. There is no presumption that time will be extended unless it cannot be justified. The reverse is true: the exercise of discretion is the exception rather than the rule.
- if a tribunal directs itself correctly in law, the Employment Appeal Tribunal can only interfere if the decision is, in the technical sense, 'perverse', i.e. if no reasonable tribunal properly directing itself in law could have reached it, or the tribunal failed to take into account relevant factors, or took into account irrelevant factors, or made a decision which was not based on the evidence.
- what factors are relevant to the exercise of the discretion, and how they should be balanced, are a matter for the tribunal. The prejudice that a respondent will suffer from facing a claim which would otherwise be time-barred is customarily relevant in such cases.
- the tribunal may find the checklist of factors in section 33 of the Limitation Act 1980 helpful.

31. In **Kumari v Greater Manchester Mental Health NHS Foundation Trust [2022] EAT 132,** The Employment Appeal Tribunal confirmed that it was not, in principle, wrong to consider and assess the merits of a proposed claim, and to weigh these in the balance.

32. In this case, whether or not the complaints were made within the relevant time limit is contested. As the Claimant does not accept that he was removed from his course, he considers that he remains a student of the Respondent and that the Respondent's decision not to allow him to access his course, and therefore any paid work, is an ongoing act. However, it is clear from the letter of 9 May 2022 that the Respondent had made a decision at that point to withdraw the Claimant from his course with immediate effect. Whether or not the Claimant accepted that decision, that was the date on which the Respondent had decided it. I do not consider that the date of the Respondent's decision was altered by the fact that the Claimant was given different information later by an SID adviser, or that Dundee Council told the Claimant on 29 April 2024 that the relevant institutions had confirmed study dates that did not align with the Claimant having been removed from his course in May 2022. The letter dated 9 May 2022 is unambiguous and the Respondent has not allowed the Claimant access to the University and its services since. I therefore conclude that the date of the act to which the Claimant's complaints relate is 9 May 2022, and accordingly the time limit under s123(1)(a) EqA for his claim was 8 August 2022. The Claimant did not present any claim to the Tribunal until 22 July 2024, and that claim was rejected on the basis that insufficient details of the complaints had been provided. The Claimant's claim was amended and was then accepted by the Tribunal on 3 September 2024. The Claimant's claim was therefore accepted by the Tribunal more than 2 years after the time limit under s123(1)(a) EqA had expired.

33. I must therefore decide whether the claim was lodged within such other period as was just and equitable. I take into account the following factors:

    a. As I understand the Claimant's oral evidence, he had two main reasons for not lodging his claim on time. The first was that he did not accept he had been removed from his course, and if he had brought a claim complaining that he had, he was concerned that this would have affected his immigration status. The second was that his focus was not on the Respondent's alleged failure to prevent him from working, but on trying to regain access to his programme of study. This meant that even though he is well-educated and clearly capable of researching how to enforce employment-related rights, he did not investigate the legal position or take any legal advice at the time the Respondent's decision was made or for a long time thereafter. Neither of these reasons appears to me to be strong in justifying such a long delay in lodging an Employment Tribunal claim. The Claimant could have taken advice at the time of the Respondent's decision on 9 May 2022 on whether enforcing his employment rights would have affected his immigration status, as it would have been important for him to understand the implications of the Respondent's decision on his right to remain in the UK in any event. He could also easily have found online the time limits for bringing a discrimination claim and sought to enforce his employment-related rights earlier, as well as his rights in respect of his programme of study.

    b. In relation to prejudice, the Respondent did not provide submissions or evidence about any prejudice it might suffer as a result of the delay to the Claimant's claim. I also note that the Respondent was able to provide relevant documentation in the bundle for this Preliminary Hearing, so there is no evidence that it has been inhibited from investigating the Claimant's complaints. On the other hand, there is obviously the potential for significant prejudice to the Claimant if he is unable to proceed with his discrimination complaints. The extent of the prejudice to the Claimant depends on the merits of the case which he would be prevented from pursuing if time is not extended.

    c. The Claimant's direct race discrimination claim has no reasonable prospect of success. The Claimant's case is not that the Respondent either decided not to employ him, or withdrew an offer of employment made to him, because he is Nigerian. In fact, the Claimant explained in his oral evidence that after he was removed from his course, he was sure that if he regained access to it, employment would follow. The Claimant's case is that he did not end up doing any paid work for the Respondent because the Respondent terminated his programme of study. As the reason for the termination given by the Respondent related to the Claimant's immigration status, and the Claimant needed a visa because he was not a UK national, there is a link between the Claimant's race and the asserted less favourable treatment. However, that link is too remote to provide the basis for a claim of direct discrimination under s13 EqA. Even on the Claimant's own case the less favourable treatment was not because of the Claimant's race.

d. The Claimant's indirect race discrimination claim has no reasonable prospect of success. The Claimant is complaining about the Respondent's policy of not allowing a person to work unless that person can prove they have a visa that enables them to work. Employers are required by law to ensure that their employees have the right to work in the UK, and there are penalties should they fail to do so, as set out in s15 of the Immigration, Asylum and Nationality Act 2006. Universities acting as a tier 4 sponsor similarly must ensure compliance with immigration rules. Even if the Claimant established some of the elements needed for a complaint of indirect discrimination under s19 EqA, the Respondent's policy would not be indirectly discriminatory if the Respondent could show that it was objectively justified. The Claimant's case is that he was removed from his course, which prevented him from being able to work. However, the Respondent did not remove the Claimant from his course immediately. He was subject to a TVI period of nearly 5 months before he was withdrawn from his programme of study, giving him time to provide the evidence that the Respondent required. I have no doubt that the Respondent would be able to show that its policy was a proportionate means of achieving a legitimate aim.

34. Taking all of these factors into account, I have concluded that there it would not be just and equitable to extend time to enable the Claimant's discrimination complaints to proceed. The complaints of direct and indirect race discrimination are therefore dismissed.

Time limit – breach of contract

35. Article 7 of The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 SI 1994/1623 provides that a complaint by an employee for breach of contract shall not be entertained unless it is presented within 3 months either of the effective date of termination, or the last day upon which the employee worked in the employment that has terminated. That time period can be extended: 'where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable'.

36. The Claimant was not clear in his claim form, grounds of response or oral evidence about when he alleges his employment with the Respondent terminated. However, he did agree that the Respondent only employed registered students as postgraduate teaching associates, and that the Respondent's policy states a PhD student who has finished their course can only continue to do planned contracted work for the Respondent until the end of the academic year. The Claimant also confirmed that he never did any paid work for the Respondent. I therefore conclude that the latest date on which any employment relationship between the Claimant and Respondent can have ended was 9 May 2022. At that point, the Claimant ceased to be a registered student, so was not eligible to do anything other than planned contracted work. The Claimant has never done any paid work for the Respondent and does not assert that any had been planned in the period between his withdrawal from the course and the end of the academic year.

This means that the primary time limit expired on 8 August 2022. The Claimant's claim was accepted by the Tribunal on 3 September 2024, more than 2 years after that time limit had expired.

37. I have already set out the reasons the Claimant gave for not lodging his claim earlier. My view, as set out above, is that the Claimant could have taken advice at the time of the Respondent's decision on 9 May 2022 on whether enforcing his employment rights would have affected his immigration status, as it would have been important for him to understand the implications of the Respondent's decision on his right to remain in the UK in any event. He could also easily have found online information about the relevant time limits and sought to enforce his employment-related rights earlier, as well as his rights in respect of his programme of study. I therefore conclude that it was reasonably practicable for his complaint to have been presented on time. As the complaint of breach of contract is out of time, and time has not been extended, the complaint is dismissed.

Strike out - no reasonable prospects of success

38. As the Claimant's claims have all been dismissed for being out of time, I do not need to decide whether to strike out the claim on the basis that there is no reasonable prospect of success.

Costs

39. No determination is made at this stage in relation to costs, but the Respondent is at liberty to renew its application once it has considered the content of this judgment.

Approved by:

Employment Judge Yallop
20 July 2025

Judgment sent to the Parties on 08 August 2025

For the Tribunal Office

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

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